

Tuesday, June 7, 2005

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Chiang, Chair, and Ms. Yee present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Martha Albright, 284013

2004, \$347.00

For Claimant:

Martha Albright, Taxpayer

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Appellant's Exhibit: HRA Appeal Form (Exhibit 6.1)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard absent, the Board submitted the appeal for decision.

Mr. Chiang requested the Franchise Tax Board look into the matter of variations-in-address related to this case and provide a report to the Board.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Andrew Kaweck, 283454

2000, \$5,734.86 Tax, \$1,433.71 Late Filing Penalty

For Appellant:

Andrew Kaweck, Taxpayer

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that respondent incorrectly estimated his taxable income for 2002.

Whether appellant has shown "reasonable cause" for not filing a tax return for 2000.

Action: The Board deferred consideration of this matter to later in the day.

Patricia M. Codd, 225252

1990, \$3,086.37 Assessment

For Appellant:

Patricia Codd, Taxpayer

Robert Lee Daily, Representative

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has met her burden to prove error in respondent's grant of partial, rather than complete, separate liability innocent spouse relief to appellant.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board submitted the appeal for decision.

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HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

John Applewhite, 283611

2004, \$1.00 or more

For Claimant:

John Applewhite, Taxpayer

Donna Blakley, Representative

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board submitted the appeal for decision.

Mr. Chiang requested a transcript of this hearing and directed the Appeals Division to draft a letter to the county assessor indicating the taxpayer's concern and ask the assessor to look into the matter.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Andrew Kaweck, 283454

2000, \$5,734.86 Tax, \$1,433.7 Late Filing Penalty

For Appellant:

Andrew Kaweck, Taxpayer

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that respondent incorrectly estimated his taxable income for 2002.

Whether appellant has shown "reasonable cause" for not filing a tax return for 2000.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to file supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board.

The Board recessed at 10:20 a.m. and reconvened at 1:00 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Philip Werbin and Leonard Werbin, 185789

10-1-98 to 9-30-01, \$23,592.63 Tax, \$00.00 Negligence Penalty

For Petitioner:

Philip Werbin, Taxpayer

Ira Frankel, Accountant

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited taxable markup is excessive.

Whether the disallowed deductions for returned merchandise and cash discounts should be allowed because they are small amounts.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Liquid Partyworks, Inc., 207939

1-1-98 to 6-30-01, \$76,504.84 Tax, \$00.00 Negligence Penalty

For Petitioner: Thomas Binns, Representative
Peter Elias, Witness

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that taxpayer is entitled to additional adjustments for pilferage with respect to sales to caterers.

Whether the evidence shows that taxpayer is entitled to additional adjustments to the audited taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Cosmos Medical Technology, Inc., 198974

7-1-98 to 12-31-01, \$40,164.97 Tax, \$7,960.37 Negligence Penalty

For Petitioner: John Clark, Taxpayer

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence supports additional adjustments to the audited amount of taxable sales.

Whether the negligence penalty was properly applied.

Action: The Board postponed this matter.

Steven David Dunn, 217943

1-1-99 to 12-31-01, \$89,730.80 Tax, \$8,973.09 Negligence Penalty

For Petitioner: Michael Khoo, Enrolled Agent

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether taxpayer has provided sufficient evidence to support any reduction in the disallowed amounts of claimed nontaxable sales for resale, nontaxable installation labor, or exempt sales in interstate commerce.

Whether taxpayer has established that the amount of gross receipts reported on his federal income tax returns is a more accurate measure of gross receipts than that reported on taxpayer's sales and use tax returns.

Whether imposition of the negligence penalty was proper.

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Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

The Dong-Huong Group, 215321

1-1-99 to 12-31-01, \$91,121.23 Tax, \$9,112.14 Negligence Penalty

For Petitioner: Michael Lee, Accountant

The Nguyen, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Sales and Use Tax Department properly determined petitioner's taxable sales of hot food, other taxable merchandise, and hot party trays for the audit period.

Whether the negligence penalty was properly asserted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Action Boats, Inc., 241957

1-1-99 to 12-31-01, \$98,480.50 Tax

For Petitioner: Janet Pass, Attorney

For Sales and Use Tax Department: Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided sufficient evidence to establish that certain transactions were not subject to tax.

Whether petitioner relied upon erroneous written advice received from the Board by its predecessor and is entitled to relief from the tax.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Geffrey Dennis Garofolo, 244316*.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Ayesh H. Ayesh, 235815

10-1-99 to 6-30-02, \$38,927.65 Tax, \$9,731.94 Fraud Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

Geffrey Dennis Garofolo, 244316

4-1-00 to 5-31-01, \$36,001.00 Tax, \$3,600.10 Finality Penalty

Action: The Board took no action.

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BH Cars, Inc., 183962

10-1-98 to 9-30-01, \$7,348.78 Tax

Action: Redetermine as recommended by the Appeals Division.

Girma Adugna, 213314

3-1-99 to 12-31-01, \$3,605.25 Tax

Action: Redetermine as recommended by the Appeals Division.

Stuart Neil Silver, 254342, 254343

8-1-99 to 11-13-01, \$577,78.10 Tax, \$144,429.56 Fraud Penalty

12-1-00 to 11-24-01, \$28,241.40 Tax, \$2,824.15 Negligence Penalty

Phyllis L. Silver, 254340, 254341

8-1-99 to 11-13-01, \$299,554.77 Tax, \$29,955.48 Negligence Penalty

12-1-00 to 11-24-01, \$28,241.40 Tax, \$2,824.15 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Narendra K. Mistry, 286422

2000, \$5,741.00 Tax, \$1,435.25 Late Filing Penalty, \$1,435.25 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board.

Martin C. and Roxanne Wright, 269301

2000, \$90.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Mehri Mahmoudi Jebeli, 288490

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Emily Leyva, 288940

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Jewell G. Scott, 284175

2004, \$347.00

Action: Sustain the action of the Franchise Tax Board.

Ofelia F. Vallejo, 295182

2004, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Boris Zhukovskiy, 282680

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, REDETERMINATIONS, DENIALS OF RELIEF OF PENALTIES AND DENIALS OF CLAIMS FOR REFUND, CONSENT

The Board deferred consideration of the following matters: *Praxair, Inc.*, 306183; *Reebok International Ltd.*, 303707; and, *MGE UPS Systems, Inc.*, 306082.

With respect to the Sales and Use Tax Matters, Redeterminations, Denials of Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Candle Corporation, 119103

7-1-94 to 3-31-98, \$323,535.47

Action: Approve the redetermination as recommended by staff.

Hollywood Entertainment Corporation, 259341

10-1-97 to 6-30-01, \$226,354.98

Action: Approve the redetermination as recommended by staff.

Merdad Houriani, 249371

6-1-00 to 12-31-02, \$58,472.13

Action: Approve the redetermination as recommended by staff.

Praxair, Inc., 306183

1-1-98 to 12-31-02, \$139,440.17

Action: The Board took no action.

Reebok International Ltd., 303707

10-1-96 to 12-31-99, \$70,792.92

Action: The Board took no action.

MGE UPS Systems, Inc., 306082

7-1-98 to 3-31-02, \$73,275.05

Action: The Board took no action.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

The Board deferred consideration of the following matters: *Praxair, Inc.*, 220277; and, *Reebok International Ltd.*, 303704.

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Valley Automation Resources, Inc., 305730

1-1-04 to 9-30-04, \$570,223.54

Action: Approve the credit and cancellation as recommended by staff.

Discus Dental, Inc., 304310

10-1-99 to 12-31-03, \$127,951.41

Action: Approve the refund as recommended by staff.

Square D Company, 250574

10-1-00 to 12-31-02, \$91,244.00

Action: Approve the refund as recommended by staff.

C-Cor.Net Corporation, 214906

1-1-02 to 3-31-03, \$120,867.26

Action: Approve the refund as recommended by staff.

Praxair, Inc., 220277

1-1-98 to 12-31-02, \$1,648,647.89

Action: The Board took no action.

Reebok International Ltd., 303704

10-1-96 to 12-31-99, \$124,017.81

Action: The Board took no action.

Taylor Made Golf Company, Inc., 265167

1-1-99 to 6-30-02, \$106,013.93

Action: Approve the refund as recommended by staff.

Agere Systems, Inc., 222073

2-1-01 to 12-31-01, \$755,454.82

Action: Approve the refund as recommended by staff.

Scaled Composites, LLC, 261316

4-1-01 to 6-30-04, \$539,391.30

Action: Approve the refund as recommended by staff.

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Ameron, Inc., 287646

1-1-04 to 6-30-04, \$136,910.19

Action: Approve the refund as recommended by staff.

Bombardier Capital, Inc., 117127

4-1-98 to 12-31-02, \$1,056,598.31

Action: Approve the refund as recommended by staff.

Bank of America Technology and Operations, Inc., 208316

7-1-99 to 12-31-02, \$652,264.10

Action: Approve the refund as recommended by staff.

Athome.Net, 244255

7-1-00 to 9-30-01, \$3,181,662.00

Action: Approve the refund as recommended by staff.

Balboa Thrift & Loan Association, 300604

1-1-04 to 9-30-04, \$59,497.18

Action: Approve the refund as recommended by staff.

Nuvell Credit Corporation, 300576

10-1-04 to 12-31-04, \$120,186.70

Action: Approve the refund as recommended by staff.

McCoy Workplace Solutions LP, 265254

1-14-98 to 6-30-03, \$55,823.91

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 297575

7-1-04 to 9-30-04, \$546,584.95

Action: Approve the refund as recommended by staff.

Transouth Financial Corporation, 300620

4-1-04 to 6-30-04, \$2,117,440.61

Action: Approve the refund as recommended by staff.

**SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS,
CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board made the following orders:

Otay Landfill, Inc., 282226

1-1-03 to 3-31-04, \$80,975.64

Action: Approve the refund as recommended by staff.

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ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 2:20 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Govt. Code § 11126(e)) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 2:35 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel present.

FINAL ACTION ON HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARINGS HELD JUNE 7, 2005

John Applewhite, 283611

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board sustained the action of the Franchise Tax Board.

Martha Albright, 284013

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board sustained the action of the Franchise Tax Board.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

Richard and Susan Eberhardt, 258769

1991, \$22,951.00 Claim for Refund

For Claimant:

Appearance Waived

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that their refund claim is not barred by the statute of limitations.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING HELD JUNE 7, 2005

Patricia M. Codd, 225252

Final Action: Mr. Parrish moved to reverse the action of the Franchise Tax Board. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Leonard absent, the Board sustained the action of the Franchise Tax Board.

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FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 7, 2005

Philip Werbin and Leonard Werbin, 185789

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Liquid Partyworks, Inc., 207939

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Steven David Dunn, 217943

Final Action: Upon motion of Mr. Parrish, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Ms. Yee voting no, Mr. Leonard absent, the Board ordered that the negligence penalty be deleted, otherwise redetermine as recommended by the Appeals Division.

The Dong-Huong Group, 215321

Final Action: Upon motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the measure for hot party trays be reduced by 25 percent, otherwise redetermine as recommended by the Appeals Division.

Action Boats, Inc., 241957

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 2:45 p.m.

The foregoing minutes are adopted by the Board on August 31, 2005.

Note: The following cases were removed from the calendar prior to the meeting: *Billy W. and Gayle H. Blanks*, 268581; *BG Star Productions, Inc.*, 268579; and, *Frances Micelli*, 260703.